

ground that the caveat of Peter and the caveat of Chapline stand on the same principles; the chancellor thinks proper to make some remarks by way of appendix to the foregoing opinion.

He has said that in this case there was no proof of the former runnings of "Well done": his meaning perhaps, was not comprehended: It was, that nothing which could be received as evidence had been offered. It is to be remembered that, on the day first appointed for hearing the caveat, the certificate and plat of a survey of all the lands laid down at the request of the parties, by a deputy of the county surveyor, was produced. The lands were laid down according to the present running, and likewise with an allowance, for variation, of  $2\frac{1}{2}$  degrees. The caveator relied on the second laying down, whereby it appeared, that almost the whole of the lands in dispute were comprehended within the lines of "Well done." But the chancellor having in no case made an allowance for variation without proof of original or former runnings of some one or more of the lines, and there being no proof whatever of the original, or former, runnings of "Well done," the caveat would have then been dismissed, had not the caveator made oath that he had reason to believe, and did believe, he should be able to establish the original or former runnings by proof. On this affidavit the decision was postponed from autumn to the following spring.

It had appeared, as before said, from the certificate and plat of the surveyor, that no rate of allowance for variation would make the lines of "Well done" correspond with the lines of those tracts which it was alledged to run with, so as to include the land in dispute. The surveyor was examined by the chancellor, and declared that he had revised his work, and was satisfied that it was free from error. Now, to establish actual former runnings by depositions it was necessary to have the lands again laid down in presence of witnesses, who might depose as to certain spots in the plat. This might have been done under the original order for laying down; by the surveyor of the county; or if any valid objections had been offered against the county surveyor, the chancellor, (as he has done in similar cases,) would have appointed some other person, obnoxious to neither party. But the caveator, without applying for such an appointment, thought proper to have the lands laid down, platted, and certified by Charles Beatty, without the consent of George Scott, who would not attend either the survey or the taking of depositions relative to spots in the plat, and objected against the plat as evidence. It was accordingly rejected, and the depositions which were taken merely to establish the work were of course of no efficacy. Matters then remained on the same footing on which